REMARKS

Claims 15 to 34 are currently pending and being considered in the present application (claims 1 to 14 were previously cancelled).

Reconsideration is respectfully requested based on the following.

Claims 28 to 34 were rejected under 35 U.S.C. § 101 as to the statutory subject matter requirement. (*Paper Number 20080807, p. 3*).

While the rejections may not be agreed with, to facilitate matters, claim 28 now includes the features of "computer readable medium", as suggested by the Office Action. (*Paper Number 20080807, p. 4*). The dependent claims 29 to 34 have also been conformed. It is therefore respectfully requested that these rejections be withdrawn as to claims 28 to 34.

Claims 15 to 34 were rejected under 35 U.S.C. § 102(b) as anticipated by WIPO publication No. WO 00/78038 to Szeliski, ("Szeliski"). (*Paper Number 20080807, p. 4*).

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Szeliski reference concerns a system and method for manipulating a set of images of a static scene captured at different exposures (ic., "bracketed" images) to yield a composite image with improved uniformity in exposure and tone. This is generally achieved by analyzing a set of bracketed images using a multi-dimensional histogram and merging the

images via an approach that projects pixels onto a curve that fits the data (400-406). However, it has been found that the desired composite image can also be produced by summing the pixel brightness levels across the multiple images (706), followed by an equalization process. One possible equalization process involves simply averaging the summed pixel brightness values by dividing the summed value of each pixel set (i.e., groups of corresponding pixels from the bracketed images) by the number of bracketed images. An even better result can be achieved using a histogram equalization process (710-720). (See Szeliski, Abstract).

Accordingly, Szeliski does not identically describe (or suggest) the feature of "a frequency of the gray values of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant; and the gray value density of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant." As provided for in the context of claims 15, 22 and 28.

In particular, Szeliski refers to a histogram equalization process involving creation of a count of number of pixels sets having the same summed brightness level. From this count, a cumulative distribution function is computed and normalized to a maximum value corresponding to the maximum summed brightness level. (*Szeliski, p. 3, lines 20 to 24*). The pixel set is made up of all the corresponding pixels from the bracketed images, where corresponding pixels are defined as pixels that represent the same portion of the depicted scene. (*Szeliski, p. 3, lines 13 to 16*). Notably, bracketed images will mean a set of images captured at different exposure levels. (*Szeliski, p. 2, lines 4 to 5 and lines 14 to 17*).

The Office Action apparently interprets the histogram equalization involving creating a count of the number of the pixels sets having the same summed brightness level as frequency of the gray values. (*Paper Number 20080807, p. 5*). It is respectfully submitted that the frequency of a gray value, in accordance with the present application, designates the number of pixels within one camera image that have this gray value based on the total number of pixels, and that a constant frequency of the gray values within a histogram of an image is referred to as a uniformly distributed histogram. (*Specification, p. 6, lines 11 to 14*). At best, Szeliski discloses counting of the number of pixel sets comprising of a plurality of bracketed images. In sharp contrast, the frequency of a gray value refers to number of pixels within a single camera image that have this gray value based on the total number of pixels.

Moreover, the Office Action apparently interprets interpret slope of the characteristic curve of Fig. 9A as the gray value density. (*Paper Number 20080807, p. 6*). It is respectfully

submitted that gray value density designates the sum of frequencies $h(g_i)$ of gray values g_i in an interval Δg of gray values in reference to interval Δg. (*Specification, p. 6, lines 14 to 16*). Fig. 9A merely depicts a partial histogram equalization that is beneficial in that it can mitigate the effects of noise, as might be introduced by large areas of a single color in the images. (*Szeliski, p. 15, lines 12 to 15*). One way of accomplishing the partial equalization is to blend the normalized cumulative distribution function with a straight line function referring to Fig. 9A.

Conspicuously, Szeliski is wholly silent as to the feature in which the gray value density of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant. Even if the Szeliski reference may refer to an partial equalization, it is unclear as to which gray value density -- if any – of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is constant. Even if Szeliski may refer to a way of accomplishing the partial equalization (*Szeliski, p. 15, lines 18 to 20*), the blending of the normalized cumulative distribution function with a straight line function does not identically disclose nor suggest the gray value density -- let alone the gray value density of at least a part of the histogram of image signals from the at least one image sensor of the least one part of the registered scene is approximately constant, as provided for in the context of claims 15, 22 and 28.

Furthermore, it is respectfully submitted that to satisfy a frequency of the gray values of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant; and the gray value density of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant, the characteristic curve of the exposure sensitivity as a function of image signals from at least a part of the scene registered by the at least one image sensor has to be adjusted first. Significantly, Szeliski discloses fitting a curve to the data points of the constructed histograms. (*Szeliski, p. 11, lines 15 to 21*).

Even if Szeliski may concern a curve that is fitted onto the data points after the construction of histograms, it does not disclose the feature of adjusting the characteristic curve so that a frequency of the gray values of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is approximately constant, and the gray value density of at least a part of the histogram of image signals from the at least one image sensor of the at least one part of the registered scene is

approximately constant are satisfied, as provided for in the context of the presently claimed subject matter.

Accordingly, claims 15, 22 and 28 are allowable, as are the dependent claims 16 to 21, 23 to 27 and 29 to 34, which depend from claim 15, 22 and 28, respectively.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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Dated: 10/6/2008

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